

NOT DESIGNATED FOR PUBLICATION

DIVISION II

JOSEPHINE LINKER HART, Judge
COURT OF APPEALS

CA05-1255

JOSEPHINE H. MASHBURN
APPELLANT

October 25, 2006

V.

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F306001, F306002, F310296]

PAT SALMON & SONS, INC., Pacific
Employers Insurance Company
APPELLEES

AFFIRMED

Appellant, Josephine H. Mashburn, appeals the Arkansas Workers' Compensation Commission's denial of her claims for benefits and its denial of her petition to introduce additional evidence. We affirm, holding that the Commission's decision displays a substantial basis for the denial of benefits and that appellant's remaining issue was not preserved for our review.

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and when a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *See, e.g., Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, ___ S.W.3d ___ (2005). In addressing the compensability of a claim, we note that our workers' compensation statutes define a "compensable injury" as an "accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment...." Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2005). Accordingly, in order to prove a compensable injury, the claimant must prove a causal

relationship between her employment and the injury. *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

According to the opinion of the administrative law judge (ALJ), the parties stipulated that (1) on August 1, 2001, appellant injured her head and shoulders when she was struck by an overhead door; (2) on June 29, 2002, appellant injured her right knee by repeatedly bumping her knee while driving a truck that had a broken seat; and (3) on September 19, 2003, appellant injured her left knee and back in a motor-vehicle accident. While appellees initially paid medical expenses related to the three accidents, each claim was ultimately controverted.

In her opinion denying appellant's claim for benefits, the ALJ noted that after each accident, appellant underwent physical examinations, with x-rays showing some degenerative changes, and she was diagnosed with strains or sprains, treated conservatively with medication and physical therapy, and released without an impairment rating or permanent work restrictions. The ALJ also noted that between the injuries, appellant never reported during her DOT physicals any continuing symptoms from the injuries. Further, the ALJ observed that appellant did not mention to her family physicians any continuing symptoms from work-related injuries. The ALJ noted that appellant was able to continue working after these injuries until the termination of her employment. The ALJ also observed that appellant did not have MRI scans until 2003-04, when the scans showed a meniscal tear in the right knee, a bulging disc at L3-4, and a disc protrusion at T1-2/T2-3, which were further accompanied by chronic degenerative changes. The ALJ further observed that no physician causally related the MRI findings to any work-related injuries. The ALJ also wrote that appellant admitted that she lied on her DOT physicals, that she did not disclose her previous injuries to her physicians, and that after appellant's last injury, the treating

physician noted indications of malingering.

The ALJ found that appellant failed to prove a causal relation between (1) the August 2001 accident and the degenerative changes and spondylosis at C5-6 with protrusions at T1-2 /T2-3 diagnosed by MRI on June 2, 2004; (2) the June 2002 accident and medial meniscus tear in her right knee diagnosed by MRI on March 11, 2003; and (3) the September 2003 accident and her disc degeneration and bulging at L3-4 diagnosed by MRI on June 2, 2004. Appellant appealed to the Commission, which adopted the ALJ's decision to deny benefits.

On appeal, appellant argues that the Commission's decision was not supported by substantial evidence. She asserts that she proved a causal relation between her work-related accidents and her current condition. With regard to her neck and shoulder, appellant questions the Commission's reliance on appellant's failure to seek further treatment, arguing that such efforts would have been futile, further noting that she continued to experience pain and problems and that she did report a "knot" to one of her physicians. With regard to the right knee, appellant notes that one physician's conclusion that she did not have meniscal tear was not a definitive conclusion. Appellant also challenges the significance of her failure to report her injuries on the DOT physical and further points out that she made a complaint of right-knee pain on September 23, 2003. Also, she cites to testimony that a meniscal tear can be asymptomatic and that there was no way to tell if a meniscal tear was the result of an acute injury or chronic. With regard to her left knee, appellant observes the physician's examination was not definitive and that indications of malingering do not necessarily exclude an injury.

We, however, view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings. Given the evidence relied upon by the Commission, we hold that the Commission's decision displays a substantial basis for

the denial of relief, as there was a substantial basis for finding that appellant failed to prove a causal relationship between the accidents at work and the results of the MRI scans. Accordingly, we affirm.

Following the ALJ's ruling, appellant filed a motion with the Commission seeking to introduce additional evidence. The Commission denied the motion, and appellant now argues on appeal that the Commission erred in denying the motion. We note that the Commission's discretion to remand for the taking of additional evidence should be exercised and the motion to present new evidence should be granted where the movant was diligent and where the new evidence is relevant, is not cumulative, and would change the result. *Hargis Transp. v. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004). While the record contains a list of additional evidence that appellant sought to admit, the evidence is not in the record. Thus, we are unable to determine if the evidence was relevant, cumulative, or would change the result. It is the appellant's burden to bring up a record sufficient to demonstrate that error was committed, and where an appellant fails to meet that burden, this court has no choice but to affirm. *See, e.g., Hudson v. Kyle*, ___ Ark. ___, ___ S.W.3d ___ (Feb 23, 2006).

Affirmed.

GLOVER and CRABTREE, JJ., agree.